HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Description of the case

Writ Petition No. 131 (SB) of 2004

V.S. Thapliyal

Vs

State of Uttaranchal through Secretary, Horticulture and others

others.

Approved for reporting.

Not approved for reporting

Date of decision 26.09.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 131 (SB) OF 2004

V.S. Thapliyal,
S/o late Sri P.D. Thapliyal,
R/o presently working as District Manager,
Uttaranchal Tea Board, Nautee Tea Estate,
Bhatoli, Karan Prayag. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary, Horticulture.
2. Director, Horticulture, Uttaranchal Tea Devel0pment Board, Almora.
3. Uttaranchal Tea Development Board, Almora, through its Chairman.
4. Garhwal Mandal Vikas Nigam, through its Managing Director, 74/1, Rajpur Road, Dehradun.

.....Respondents.

Dated: September 26, 2006

Coram: **HON'BLE RAJEEV GUPTA, C.J.**

HON'BLE RAJESH TANDON, J.

Per Hon'ble Rajesh Tandon, J.

Heard Sri B. P. Nautiyal & Hari Mohan Bhatia, Counsel for the petitioner and Sri Sudhanshu Dhulia, Sr. Advocate, assisted by Ms. Pooja Banga, Counsel for the respondents no. 2 and 3, Sri U.K. Uniyal, Sr. Advocate, assisted by Sri Sobhit Saharia, Counsel for the respondent no. 4 and Standing Counsel for the respondent no. 1.

2. By the present writ petition, initially the petitioner has sought following relief:

> "A. Issue a writ order or direction in the nature of certiorari quashing the order dated 14.05.2004 (Annexure No. 3) passed by respondent no. 2 and resolution no. 2 passed by the respondent No. 3 on 15.4.2004 (Annexure No. 2).
>
> B. Issue a writ, order or direction in the nature of mandamus commanding the respondent not to give effect to order dated 14.5.2004 (Annexure No. 3) and resolution No. 2 passed by the respondent No. 3 on 15.4.2004 (Annexure No.2).
>
> C. Issue any other or further order which this Hon'ble Court may deem fit and proper in the circumstances of the case.
>
> D. Award the cost of the petition to the petitioners."

3. Thereafter by amendment dated 14th September, 2004, the petitioner has added one more relief as **BB** to the following effect:

> "BB- Issue a writ, order or direction I the nature of mandamus commanding the respondent no. 1 to 3 not fill up the post of District Manager Uttaranchal Tea board, in pursuance of the advisement dated 2.9.2004 as the same being held by the petitioner."

4. Briefly stated, the petitioner was initially serving with Garhwal Mandal Vikas Nigam since 1978 as a Shift Supervisor.

Thereafter on 4th September, 1996, the petitioner along with other three employees was attached with the Uttaranchal Tea Development Scheme. While attaching the petitioner, it was made clear that the lien of the petitioner shall remain with the parent department i.e. Garhwal Mandal Vikas Nigam and there shall not be any change in the cadre of the petitioner and in case, their work is not found satisfactory, they shall be repatriated to the parent department. The note to this effect along with attachment order with the Uttaranchal Tea Development Scheme is quoted below:

> "उपरोक्त चारों कर्मचारियों को प्रदत्त वेतनमान एवं वेतन वृद्धियां पदोन्नति के अर्न्तगत प्रदान नहीं की जा रही है अपितु यह एक्स केडर नियुक्ति होगी। यह कर्मचारी उत्तराखण्ड चाय विकास परियोजना में प्रतिनियुक्ति पर होंगे। प्रदत्त वेतनमान एवं वृद्धियां सम्बन्धित कर्मचारियों को चाय परि0 में कार्य की अवधि में ही प्राप्त होंगी। और उनका लियन उनके वर्तमान सम्वर्ग में ही रहेगा। कोई सम्वर्ग परिवर्तन नहीं होगा। यदि सम्बन्धित कर्मचारियों का कार्य सान्तोशजनक नहीं पाया गया अथवा उन्हें किसी अन्य कारण से चाय परियोजना से पृथक किया जाता है तो सम्बन्धित कर्मचारी अपने मूल सम्वर्ग में प्रत्यावतिर्तत हो जायेंगे और उन्हें नियमानुसार अपने मूल सम्वर्ग का वेतनमान देय होगा।
>
> सम्बन्धित कर्मचारियों के वेतन भत्तों आदि का भूगतान उत्तराखण्ड चाय विकास परियोजना एवं ओवर हेड मद से वहन किया जाये।
>
> उपरोक्त चारों कर्मचारी श्री आर0एस0 अधिकारी सामान्य प्रबन्धक चाय कुमाऊँ विकास निगम लि0 के नियंत्रणाधीन कार्य करेंगे।"

5. On 11th February, 2004 a Government Order/Office Memorandum No. 159/Va.Gra.Vi./338/2003 was issued, whereby Uttaranchal Tea Development Board was created and the services of the employees working in the said department were directed to be merged with the Uttaranchal Tea Board. Paragraphs no. 3 and 4 of the said G.O. are quoted below:

> "3- ckMZ dk e[;ky;%& बोर्ड का मुख्यालय अल्मोड़ा होगा।
>
> 4- pk;fjr tuk dsdeZpkfj;ksa@vf/kdkfj;ksa dk lek;kstu%
>
> वर्तमान परियोजना हेतु स्वीकृत पदों के विपरीत कार्यरत अधिकारियों/कर्मचारियों को पद सहित वर्तमान सेवा भार्तो के साथ बोर्ड में समायोजित कर लिया जायेगा, परियोजना के द्वारा एक चाय वि ोशज्ञ डा0 एम0बी0 तमंग को अनुबन्ध पर रखा गया है बोर्ड को डा0 तमंग की सेवाओं की आव यकता होने पर प्रबन्ध कारिणी की संस्तुति पर पुनः अनुबन्ध पर रखा जा सकेगा, परियोजना द्वारा विभिन्न बागानों, नर्सरियों में जो स्टाफ अनुबन्ध/संविदा पर रखा गया है, उनकी सेवाएं यथावत बोर्ड में ले ली जायेगी तथा अग्रेतर इनकी सेवायें प्राप्त करने का निर्णय बोर्ड का रहेगा।
>
> बोर्ड के अधीन समाहित होने में असहमति व्यक्त करने वाले कार्मिकों को यथास्थिति कुमाऊँ मण्डल विकास निगम की सहमति से प्रत्यावर्तित किये जाने पर विचार किया जायेगाा।"

6. On 14th May, 2004, another development has taken place by which the petition was repatriated to his parent department (i.e. Garhwal Mandal Vikas Nigam) and the petitioner was asked to handover the charge to Sri P.C.S.

Rautela/Field Assistant. The contents of the order passed on 14th May, 2004 are reproduced as under:

> "श्री बी0एस0 थपलियाल, प्रबन्धक, नौटी चाय बागान, नौटी जो गढ़वाल मण्डल विकास निगम से एक्स कैडर में उत्तरांचल चाय विकास परियोजना में कार्यरत हैं को, उत्तरांचल चाय विकास परियोजन में कार्यरत हैं को, उत्तरांचल चाय विकास बोर्ड की दिनांक 15.04.04 बैठन के मद संख्या 2 में लिये गये निर्णय के आधार पर, इनके मूल विभाग (गढ़वाल मण्डल विकास निगम) में प्रत्यावर्तित किया जाता है, श्री थपलियाल, प्रबन्धक अपना सम्पूर्ण कार्यभार (बागान, नर्सरी एवं स्टॉक/स्टोर आदि) श्री पी0सी0एस0 रौतेला, फील्ड सहायक का हस्तान्रित करें।"

7. Counsel for the petitioner Sri B.P. Nautiyal Has submitted the following submissions:

> "1. Clause 4 of the Government Order dated 11th February, 2004 by which the Uttaranchal Tea Development Board was constituted of the aforesaid Government Order provides the scheme of absorption of the employees, who are working in the department.
>
> 2. The petitioner, therefore, by virtue of the creation of the Uttaranchal Tea Development Board has been ceased to be the employee of Garhwal Mandal Vikas Nigam and as such he is entitled for all the benefits as available to the employees of Uttaranchal Tea Development Board constituted by virtue of Government Order dated 11th February, 2004."

7. Since both the aforesaid submissions are connected together and therefore, they are dealt together.

8. Sri B.P. Nautiyal, Counsel for the petitioner has submitted that as per G.O. dated 11th February, 2004, the petitioner has been permanently absorbed with the Uttaranchal Tea Development Board and the action of the respondent while passing the order for repatriation is wholly illegal.

9. A counter affidavit has been filed by Sri R.S. Adhikari on behalf of the Tea Board, where it has been specifically mentioned in paragraph 3 (i) that the petitioner was working in its parent department i.e. Garhwal Mandal Vikas Nigam, Dehradun was sent on deputation in Uttaranchal Tea Development Project in the year, 1996. In paragraph no. 3(iv), it has been stated that in meeting dated 15.04.2004 the Board decided to merge services of the ten employees out of 11 employees and stated that the services of remaining employee including the petitioner B.S. Thapliyal, are not being merged and he is being reverted back to his parent department as the enquiry is going on against the petitioner.

10. A counter affidavit ahs been filed by Sri M.P. Balodi on behalf the Garhwal Mandal Vikas Nigam Limited, Dehradun. In paragraph 11, it has been stated as under:

> *"11. That the contents oft paragraph no. 14-A of the writ petition are not admitted the manner they have been made and hence denied. It is submitted that the petitioner was sent on deputation in the year, 1996 to the respondent no. 3 (as it is now) for maximum period of 5 years. It*

is further submitted that the respondent no. 3 vide its order dated 14.5.2004 ordered the transferring of the petitioner to his parent department i.e. the answering respondent and in continuation of the same vide order no. 14/2-Stha/Stha/04 dated 27.5.2004 the petitioner was relieved from the respondent no.3 department & ordered to give his joining in the office of respondent no. 4, however, the petitioner failed to join his duties in the parent department i.e. answering respondent up to 2.6.2004 and he answering respondent was constrained to pass an order dated 2.6.2004 through which the petitioner was asked to join his duties without any delay in the parent department and order was also sent by hand to the petitioners, which the petitioner refused to accept."

11. A rejoinder affidavit has also been filed by the petitioner, where he has stated that the services of the petitioner have already been absorbed and he cannot be reverted back to the Garhwal Mandal Vikas Nigam.

12. A perusal of the attachment letter of the petitioner in the Uttaranchal Tea Development Scheme dated 4th September, 1996 shows that the petitioner was sent on deputation and there was no change in the lien of the petitioner and the same shall continue with the parent department as well appear from the note mentioned below:

"और उनका लियन उनके वर्तमान सम्वर्ग में ही रहेगा। कोई सम्वर्ग परिवर्तन नहीं होगा। यदि सम्बन्धित कर्मचारियों का कार्य सन्तोशजनक नहीं पाया गया अथवा उन्हें किसी अन्य कारण से चाय

परियोजना से पृथक किया जाता है तो सम्बन्धित कर्मचारी अपने मूल सम्वर्ग में प्रत्यावर्तित हो जायेंगे और उन्हें नियमानुसार अपने मूल सम्वर्ग का वेतनमान देय होगा।"

13. Admittedly, the petitioner was sent on deputation and the lien of the petitioner continues with his parent department.

14. In ***Kunal Nanda Vs. Union of India and another 2000 LAB I.C. 1992 (SC),*** the Division Bench of the Apex Court has held as under:

> *"It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."*

15. In ***Ratilal B. Soni and others Vs. State of Gujarat and others AIR SC 1132,*** it has been held by the Apex Court that the deputationist does not get any right to be absorbed on the deputation post. The observations are quoted below:

"5. *The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post.*"

16. In ***Mahesh Chandra Bhargawa and others Vs. Union of India and others (2001) 10 SCC 655,*** the apex court has observed as under:

"*That part, if the appellants all along had been borne in the cadre of Loco Shed and had been deputed on temporary basis to the Commercial Department when they were declared surplus, retaining a lien in the Loco Shed and even drawing their salary from the Loco Shed for all practical purposes, they had been borne all along in the cadre of Loco Shed and therefore they cannot claim a right of permanent absorption in the Commercial Department. By the impugned order dated 30-10-1992, the Railway Administration has repatriated them to their parent organization and has directed absorption in the TRS/TRD Department which cannot be held to be violative of any provisions of the circular nor does it affect any right of the appellants.*"

17, In ***Mahesh Kumar K. Paarmar and others Vs. S.I.G. of Police and others (2002) 9 SCC 485,*** the Apex Court has observed as under:

"*When the Government decided to set up a separate organization to be called as Intelligence Bureau, these petitioners were drafted into that*

Bureau way back in the year 1991 by way of deputation.……The petitioners were permitted to continue in the Intelligence Bureau even after the enforcement of the Rules till 1999, and then were repatriated to their parent organization. The petitioners' grievance is that since they could be brought into the Intelligence Bureau by way of transfer in accordance with the Rules, that have been framed in exercise of power clause (b)(of Section 5 of the Bombay police ct, and since they have already rendered services in the Bureau from 1991 till the date of their repartriation, they must be held to have acquired a right to be permanently absorbed in the Bureau or at least a legitimate expectation to be absorbed. The aforesaid grievance of the petitioner not having been acceded to by the competent authority, they approached the High court. The High Court having dismissed the writ petition , they have approached this Court. ….Mr. Dholakia, the learned Senior Counsel appearing for the State, on the other hand, submitted that the Rules never contemplated a permanent absorption of the existing employees on deputation, and therefore since the nature of their tenure in the Bureau was that of a deputation, the employer has always a right to repartriate the deputationist to the parent organization, and consequently, the question of issuing a mandamus for their permanent absorption does not arise. Having considered the rival submissions and also the relevant provisions of the Rules, we do not see

any enforceable right with the petitioners for being permanently absorbed though we see sufficient force in the contention of Dr Dhavan that the appropriate Government would be well advised to consider the retention of these petitioner permanently in the Bureau having regard to the case that they have already rendered services from 1991 till 1999, and that the Rules themselves contemplate to man the post on transfer. While, therefore, we are unable to issue any mandamus to the State Government requiring them to permanently absorb these petitioners in the Bureau, we would observe that the state Government may consider the case of these petitioners for absorption on transfer in accordance with the Rules, if they are found otherwise suitable."

18. In ***Ram Ganga Command Area Development Authority and another Vs. Sheetal Kumar Vaish and others (2003) 9 SCC 32,*** The Apex Court has observed as under:

"10. ……..One thing is clear that from the beginning the employee and the Milk Board as well as the Authority proceeded on the footing that the employee was on deputation. This becomes clear form the stand taken by the employee asserting that he was on deputation. That was also his positive stand before the Tribunal.

11. In view of materials available from the documents referred to above, the inevitable

conclusion is that the employee was on deputation form the Milk Board and appointment on temporary basis with the Authority can, by no stretch of imagination, be considered to be substantive appointment."

19. As will appear from the aforesaid dictum of the Apex Court that a deputationist has no right to be absorbed permanently more so when the order was passed on 14th May, 2004 repatriating the petitioner to his parent department. Therefore, the order dated 14the May, 2004 by which the petition was repatriated to the original department coupled with the order by which the petitioner was sent on deputation shows that his lien shall continue on the parent department and the cadre will not be changed and the said order is sufficient to come to the conclusion that there has been no order absorbing the petitioner, who is a deputationist, in the Uttaranchal Tea development Board and as such the submission of the petitioner being devoid of merit, we accordingly reject the same.

20. So far as the submission of the petitioner with regard to the benefit of Clause 4 of the G.O. dated 11th February, 2004 is concerned, it does not provide any such condition for absorption of the petitioner, who is a deputationist and the G.O. relates only for those who are already working there and the G.O. is meant to absorb them on the vacant post and those who will not opt for the Board shall be considered to be placed in various departments of the Kumaon Mandal Vikas Nigam.

21. There is no mention of either deputationist or the employees of the Government of the Garhwal Mandal Vikas Nigam and as such aforesaid G.O. has no application to the petitioner. Further the said G.O. cannot be made applicable to the petitioner in view of the attachment order that the lien of the petitioner shall remain with the parent department and the parent department has never consented for the absorption of the petitioner in the Uttaranchal Tea Development Board.

22. We, therefore, reject the arguments of the petitioner so far as the benefit of G.O. dated 11th February, 2004 is concerned.

23. In view of the aforesaid, writ petition is devoid of merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.) (Rajeev Gupta, C.J.)

September 26, 2006.
Rathour